

By: Hinojosa, et al.
(Thompson of Brazoria)

S.B. No. 1060

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of public insurance adjusters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4102.051(a), Insurance Code, is amended to read as follows:

(a) A person may not act as a public insurance adjuster in this state or hold himself or herself out to be a public insurance adjuster in this state unless the person holds a license [~~or certificate~~] issued by the commissioner under Section 4102.053 or [7] 4102.054 [~~7 or 4102.069~~].

SECTION 2. Sections 4102.066(a) and (b), Insurance Code, are amended to read as follows:

(a) The commissioner shall collect in advance the following nonrefundable fees:

(1) for a public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner;

(2) for a nonresident public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner; and

(3) for each public insurance adjuster examination, a fee in an amount to be determined by rule by the commissioner [~~and~~

~~[(4) for a public insurance adjuster trainee certificate under Section 4102.069, a registration fee in an amount~~

1 ~~to be determined by rule by the commissioner~~].

2 (b) The amount of the fee for the renewal of a license [~~or a~~
3 ~~certificate~~] issued under this chapter shall be determined by rule
4 by the commissioner.

5 SECTION 3. Section 4102.103, Insurance Code, is amended by
6 adding Subsection (d) to read as follows:

7 (d) A license holder may not enter into a contract with an
8 insured and collect a commission as provided by Section 4102.104
9 without the intent to actually perform the services customarily
10 provided by a licensed public insurance adjuster for the insured.

11 SECTION 4. Section 4102.104(d), Insurance Code, is amended
12 to read as follows:

13 (d) A public insurance adjuster may not accept any payment
14 that violates the provisions of this section [~~Subsection (c)~~].

15 SECTION 5. Section 4102.158, Insurance Code, is amended by
16 amending Subsection (a) and adding Subsections (d), (e), and (f) to
17 read as follows:

18 (a) A license holder may not:

19 (1) participate directly or indirectly in the
20 reconstruction, repair, or restoration of damaged property that is
21 the subject of a claim adjusted by the license holder; or

22 (2) engage in any other activities that may reasonably
23 be construed as presenting a conflict of interest, including
24 soliciting or accepting any remuneration from, [~~or~~] having a
25 financial interest in, or deriving any direct or indirect financial
26 benefit from, any salvage firm, repair firm, construction firm, or
27 other firm that obtains business in connection with any claim the

1 license holder has a contract or agreement to adjust.

2 (d) A license holder may not directly or indirectly solicit,
3 as described by Chapter 38, Penal Code, employment for an attorney
4 or enter into a contract with an insured for the primary purpose of
5 referring an insured to an attorney and without the intent to
6 actually perform the services customarily provided by a licensed
7 public insurance adjuster. This section may not be construed to
8 prohibit a license holder from recommending a particular attorney
9 to an insured.

10 (e) A license holder may not act on behalf of an attorney in
11 having an insured sign an attorney representation agreement.

12 (f) A license holder must become familiar with and at all
13 times act in conformance with the criminal barratry statute set
14 forth in Section 38.12, Penal Code.

15 SECTION 6. Section 4102.160, Insurance Code, is amended to
16 read as follows:

17 Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license
18 holder may not:

19 (1) advance money to any potential client or insured;
20 or

21 (2) pay, allow, or give, or offer to pay, allow, or
22 give, directly or indirectly, to a person who is not a licensed
23 public insurance adjuster a fee, commission, or other valuable
24 consideration for the referral of an insured to the public
25 insurance adjuster for purposes of [~~based on~~] the insured entering
26 into a contract with that public insurance adjuster or for any other
27 purpose [~~, or~~

1 ~~[(3) otherwise offer to pay a fee, commission, or~~
2 ~~other valuable consideration exceeding \$100 to a person not~~
3 ~~licensed as a public insurance adjuster for referring an insured to~~
4 ~~the license holder].~~

5 SECTION 7. Subchapter D, Chapter 4102, Insurance Code, is
6 amended by adding Section 4102.164 to read as follows:

7 Sec. 4102.164. ACCEPTANCE OF REFERRAL PAYMENTS PROHIBITED.

8 (a) A licensed public insurance adjuster may not accept a fee,
9 commission, or other valuable consideration of any nature,
10 regardless of form or amount, in exchange for the referral by a
11 licensed public insurance adjuster of an insured to any third-party
12 individual or firm, including an attorney, appraiser, umpire,
13 construction company, contractor, or salvage company.

14 (b) The commissioner shall adopt rules necessary to
15 implement and enforce this section.

16 SECTION 8. Section 4102.069, Insurance Code, is repealed.

17 SECTION 9. The repeal by this Act of Section 4102.069,
18 Insurance Code, does not affect the authority of a person to act
19 under a temporary certificate issued by the Texas Department of
20 Insurance under that section before the effective date of this Act.

21 SECTION 10. Sections 4102.103(d) and 4102.158(d),
22 Insurance Code, as added by this Act, apply only to a contract
23 entered into or solicitation made on or after the effective date of
24 this Act.

25 SECTION 11. (a) Except as provided by this section,
26 Section 4102.104, Insurance Code, as amended by this Act, applies
27 only to payment accepted on or after the effective date of this Act.

1 (b) Payment for a service performed before the effective
2 date of this Act or performed after the effective date of this Act
3 under a contract entered into before the effective date of this Act
4 is governed by the law as it existed immediately before the
5 effective date of this Act, and that law is continued in effect for
6 that purpose.

7 SECTION 12. Section [4102.160](#), Insurance Code, as amended by
8 this Act, and Section 4102.164, Insurance Code, as added by this
9 Act, apply only to a referral made on or after the effective date of
10 this Act. A referral made before the effective date of this Act is
11 governed by the law as it existed immediately before the effective
12 date of this Act, and that law is continued in effect for that
13 purpose.

14 SECTION 13. The changes in law made by this Act apply only
15 to an offense committed on or after the effective date of this Act.
16 An offense committed before the effective date of this Act is
17 governed by the law in effect when the offense was committed, and
18 the former law is continued in effect for that purpose. For
19 purposes of this section, an offense was committed before the
20 effective date of this Act if any element of the offense occurred
21 before that date.

22 SECTION 14. This Act takes effect September 1, 2015.